IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

CP (IB) No.140/KB/2021

In the matter of:
An application under section 7 of the Insolvency and Bankruptcy Code, 2016 read with rule 4 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016.

And

In the matter of:
Electroparts (India) Private Limited
(CIN: U31909PN1987PTC043206) … Financial Creditor

Versus

Videocon Infinity Infrastructure Private Limited
(CIN: U45400WB2008PTC126333) … Corporate Debtor

Order reserved on: 12.08.2021

Order pronounced on: 14.09.2021

Coram:

Shri Rajasekhar V.K.	:	Member (Judicial)
Shri Harish Chander Suri	:	Member (Technical)

Appearances (through video conferencing):

For the Financial Creditor	:	Mr. Aniruth Purusothaman,Advocate Mr. DebabrataGanguly, Advocate Ms. DebaleenaGanguly, Advocate Mr. B. Gayatri, Advocate
For the Corporate Debtor	:	Mr Soumik Ghoshal, Advocate

ORDER

Per: Rajasekhar V.K., Member (Judicial)

Preamble

1. This is an application filed under section 7 of the Insolvency and Bankruptcy Code, 2016 *(hereinafter, the Code)* by Electroparts (India) Private Limited *(hereinafter, the Financial Creditor)*, a company incorporated under the Companies Act, 1956 and represented by its director, Mr. Yogendra Kumar, authorised by Board

Resolutiondated 15.04.2020 annexed with the application at page 24, seeking to initiate Corporate Insolvency Resolution Process *(hereinafter, CIRP)* against Videocon Infinity Infrastructure Private Limited *(hereinafter, the Corporate Debtor).*

2. The Corporate Debtor is a private limited company incorporated on 02.06.2008, having CIN:U45400WB2008PTC126333, under the Companies Act, 1956, with the Registrar of Companies, West Bengal, Kolkata. Its registered office is at Sector-V, Block BP, Salt Lake City, Kolkata-700091, within the State of West Bengal. Therefore, this Bench has jurisdiction to deal with this Application.

3. The present application was filed before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted in payment of ₹30,00,00,000/- (Rupees thirty crore only) as on 15.12.2020.

Factual matrix

4. The case of the Applicant on the brief is as follows:

(a) *Vide* an agreement dated 01.05.2007, Quadrant Televentures Limited had takenloan amounting to ₹49,94,99,886/- (Rupees forty-nine crore ninety-four lakhninety-nine thousand eight hundred eighty-six only) from Infotel Digicomm Private Limited for expansion and development of its business.

(b) On 16.09.2009, through an assignment agreement, Infotel Digicomm Private Limited assigned this loan to Domebell Electronics India Private Limited (CIN: U65992PN1982PTC028301). Domebell Electronics India Private Limited entered into a Novation Agreement with Hyundai

Electronics India Limited (CIN: U29100MH2004PLC148081) for the aforesaid loan amount in May 2018.[1]

(c) *Vide* another agreement dated 01.05.2007, Quadrant Televentures Limited took buyer's credit facility amounting to ₹41,07,00,000/- (Rupees forty-one crore seven lakh only) from Infotel Business Solutions Limited. On 16.09.2009, Infotel Business Solutions Limited assigned this buyer's credit to Domebell Electronics India Private Limited through an assignment agreement.

(d) In May 2018 Domebell Electronics India Private Limited entered into a Novation Agreement with respect to the aforesaid buyer's credit with Hyundai Electronics India Limited (CIN: U29100MH2004PLC148081).[2]

(e) Through a Novation Agreement dated 01.06.2020, Electroparts (India) Private Limited, the Financial Creditor herein irrevocably transferred and assigned the right of recovery and allied rights in the entire loan amount of ₹91,01,99,886/- (Rupees ninety-one crore one lakh ninety-nine thousand eight hundred and eighty-six only) for a total consideration of ₹30,00,00,000/- (Rupees thirty crore only), payable to the Financial Creditor herein within six months from the date of the Agreement *i.e.,* 01.06.2020.

(f) Despite repeated reminders and personal meetings, the Corporate Debtor has failed to remit the outstanding dues of ₹30,00,00,000/- (Rupees thirty crore only). The Financial Creditor had sent a Demand Notice dated 01.12.2020 to the Corporate Debtor.

(g) The Corporate Debtor has also admitted the liability by way of balance confirmation provided by it to the Corporate Debtor. A copy of the balance confirmation letter dated 01.04.2020 is annexed to the application and marked as **Exhibit D** on **pages 31 to 34**.

[1]Page 31 of the petition
[2]Page 32 of the petition

(h) Mr. Rajkumar Nandlal Dhoot had extended a personal guarantee *vide* the same Novation Agreement dated 01.06.2020. The same has been invoked by notice dated 01.01.2021, however, no payments have been made towards it.

(i) The default occurred on 15.12.2020, therefore the present application is within time.

5. The Corporate Debtor has also placed the following documents on record:

(a) Copy of Board Resolution authorising Mr. Yogendra Kumar to file and pursue the present application, annexed to the application and marked as **Exhibit A** on **page 24**.

(b) Demand notice dated 01.12.2020, annexed to the application and marked as **Exhibit E** on **pages 35 to 41.**

(c) Copy of Novation Agreement dated 01.06.2020, annexed to the application and marked as **Exhibit F** on **pages 42 & 43.**

(d) Copy of guarantee invocation notice dated 01.01.2021, annexed to the application and marked as **Exhibit G** on **pages 44 & 45.**

6. Notice of the application was served upon the Corporate Debtor. The Corporate Debtor appeared and filed its reply affidavit. The learned counsel appearing for the Corporate Debtor has made the following submissions:

(a) The Corporate Debtor admits the liability of amount due to the Financial Creditor; however, due to the bad financial situation of the Corporate Debtor, it is unable to pay the amount.

(b) The Corporate Debtor is making all possible attempts to ensure that its assets be sold and the debt is repaid from the sale proceeds.

(c) Owing to the stressed financial position of the Corporate Debtor, six months may be granted to it during which the Corporate Debtor will discharge its liability in equated monthly instalments.

7. The Financial Creditor has proposed the name of Mr. Sanjeet Kumar Sharma as the Interim Resolution Professional of the Corporate Debtor. Mr. Sanjeet Kumar Sharma, having Registration No.IBBI/IPA-001/IP-P01132/2018-19/11827, has given his consent in the prescribed Form 2 to act as the Interim Resolution Professional (IRP). A copy of the said Form 2 is annexed to the application and marked as **Exhibit C** on **pages 27 to 30.**

Analysis and findings

8. Heard Mr. Aniruth Purusothaman, learned Counsel appearing forthe Financial Creditor and Mr. Soumik Ghosal, learned Counsel appearing for the Corporate Debtor and perused the record.

9. The present petition was initially heard and reserved for orders on 12.07.2021. However, when the petition was perused, it was noticed that according to the pleadings and documents annexed, the loan and the buyer's credit were originally sanctioned by Infotel Digicomm Private Limited and Infotel Business Solutions Limited respectively. Both the aforesaid companies assigned both the debts to Domebell Electronics India Private Limited which then assigned them to Hyundai Electronics India Limited. No document proving the same was been brought on record except for the loan confirmation letter, issued by the Corporate Debtor, that narrates the assignment of debt to Hyundai Electronics India Limited. The application and the documents, however, did not explain how this combined debt reached the hands of the Financial Creditor herein for it to be "novated."

10. The matter was, therefore, listed for clarification on 22.07.2021 and 26.07.2021. The Financial Creditor sought some time to file the

clarification through a supplementary affidavit. Time was granted under section 7(5)(b) of the Code. A supplementary affidavit affirmed on 09.08.2021 has been filed on 13.08.2021.

11. The present debt amounting to ₹30,00,00,000/- (Rupees thirty crore only) had been assigned to the Corporate Debtor by the Financial Creditor. Before the last novation of this debt, *i.e.,* to the present Corporate Debtor, the actual loan and the buyer's credit total amounting to ₹91,01,99,886/- (Rupees ninety-one crore one lakh ninety-nine thousand eight hundred and eighty-six only) had changed hands several times.

12. The Financial Creditor, through the supplementary affidavit dated 09.08.2021, submitted that the combined debt amounting to ₹91,01,99,886/- (Rupees ninety-one crore one lakh ninety-nine thousand eight hundred and eighty-six only) was assigned by Hyundai Electronics India Limited to the Financial Creditor herein *vide* a Novation Agreement dated 01.11.2019. A copy of the said Novation Agreement dated 01.11.2019 is annexed with the said supplementary affidavit and marked as **Annexure – B**.

13. Upon perusal of the said Novation Agreement dated 01.11.2019, it is seen that Hyundai Electronics India Limited had assigned the combined debt amounting to ₹91,01,99,886/- (Rupees ninety-one crore one lakh ninety-nine thousand eight hundred and eighty-six only) to Electroparts (India) Private Limited, the Financial Creditor herein.

14. Section 62[3] of the Indian Contract Act, 1872, governs *inter alia* novation of contracts. This section starts with the term, *"If the parties to a contract agree to substitute a new contract …"* This postulates that in the case of novation, **all the parties to a contract** must agree to substitution.Without this, there cannot be any case of ***"novation"*** of the contract. Further, there must be an extinguishment of rights and liabilities so that the original contract need not be performed.

15. In the present case, the so-called "Novation Agreement" of 01.11.2019 merely substitutes the existing lender's name with that of a new lender. The nomenclature of the deed is indeed Novation Agreement, but it can hardly be termed so in deed. The borrower's name – Quadrant Televentures Limited – figures under the definition clause at clause 1.1 of the agreement. it should properly be termed as an Assignment Agreement and not as a Novation Agreement.

16. It is the contention of the petitioner that there was another "Novation Agreement" dated 01.06.2020,[4] whereby the Corporate

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[3] **62. Effect of novation, rescission, and alteration of contract.**—If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

Illustrations:

(a) A owes money to B under a contract. It is agreed between A, B and C, that B shall thenceforth accept C as his debtor, instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.

(b) A owes B 10,000 rupees. A enters into an agreement with B, and gives B a mortgage of his (A's), estate for 5,000 rupees in place of the debt of 10,000 rupees. This is a new contract and extinguishes the old.

(c) A owes B 1,000 rupees under a contract, B owes C 1,000 rupees, B orders A to credit C with 1,000 rupees in his books, but C does not assent to the agreement. B still owes C 1,000 rupees, and no new contract has been entered into.

[4] Para 3 at page 14 of the petition

Debtor herein has agreed to be the incoming lender, and the Financial Creditor herein had desired to exit from the lending arrangement with Quadrant Ventures Limited. However, in this "Novation Agreement" also, Quadrant Ventures Limited, the original borrower, is not a party. However, the name of Quadrant Ventures Limited figures under the definitions in clause 1.1 at page 37 of the petition. It defines "borrower" as Quadrant Ventures Limited, giving out the registration particulars. The definition goes on to state that the borrower has no objection to this agreement and transfer of rights of recovery in favour of the incoming lender. The name of Mr Rajkumar Nandlal Dhoot figures as a guarantor in this Agreement. The consideration is a sum of ₹30,00,00,000/- (Rupees thirty crore only) as per definition in clause 1.1 at page 37 of the petition. This consideration is in lieu of the original principal loan amount of ₹91,01,99,886/- (Rupees ninety-one crore one lakh ninety-nine thousand eight hundred and eighty-six only).

17. In terms of clause 4.1 of the Agreement dated 01.06.2020 at page 38 of the petition, the consideration amount was due and payable within fifteen days of the demand of the same by the outgoing lender, which is the Financial Creditor herein. The demand in terms of the agreement was made *vide* Notice dated 01.12.2020, which is placed at pages 42-43 of the petition. The demand on the guarantor was also made on the same date, i.e., 01.12.2020, and that Demand Notice is placed at pages 44-45 of the petition. Therefore, the date of default is stated to be 15.12.2020, *i.e.,* within fifteen days of the demand.

18. The present petition is between the outgoing lender *(Financial Creditor herein)* and the incoming lender *(the Corporate Debtor herein)*,

since the consideration amount of ₹30,00,00,000/- has not been paid in terms of the Agreement dated 01.06.2020.

19. The Corporate Debtor has admitted the debt and sought for six months to repay the same in monthly instalments. The reply affidavit has been filed by one Mr. Ashwini Kumar who has deposed that he is the Authorised Signatory of the Corporate Debtor, however, this fact is not supported by any Resolution of the Board of Directors of the Corporate Debtor. From judicial pronouncements, what the Insolvency & Bankruptcy Code, 2016, envisages is only a limited notice to the corporate debtor. This notice has indeed been given, and the corporate debtor was represented at the hearings. The learned Counsel appearing for the corporate debtor submitted that the corporate debtor is not in a position to discharge the debt and that the corporate debtor is about to sell some assets to discharge its liability.

20. The Financial Creditor has proposed the name of Mr. Sanjeet Kumar Sharma, having Registration No.IBBI/IPA-001/IP-P01132/2018-19/11827, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

21. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of one crore rupees stipulated under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the petition. In view of

this, this Adjudicating Authority admits this petition and orders initiation of CIRP against the Corporate Debtor.

22. It is, accordingly, hereby ordered as follows: -

(a) The petition bearing **CP (IB) No.140/KB/2021** filed by Electroparts (India) Private Limited**,** the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Videocon Infinity Infrastructure Private Limited [CIN:**U45400WB2008PTC126333**],** the Corporate Debtor, is **admitted**.

(b) There shall be a moratorium under section 14 of the IBC, in regard to the following:

(i) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

(iii) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Sarfaesi) Act, 2002;

(iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

(c) Notwithstanding the above, during the period of moratorium,-

(i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;

(ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

(d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

(e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(f) Mr. Sanjeet Kumar Sharma, having Registration No.IBBI/IPA-001/IP-P01132/2018-19/11827, having address at BE-149, Stret No.5, Hari Nagar, New Delhi 110 064 [email: sansharma1975@gmail.com, AFA valid upto 01.12.2021], is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.

(g) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

(h) The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.

(i) The Financial Creditor shall deposit a sum of ₹3,00,000/- (Rupees three lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

23. In terms of section 7(5)(a) of the IBC, the Registry is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkataby all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

24. CP (IB) No.140/KB/2021 to come up on 15.11.2021 for filing the periodical report.

25. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Harish Chander Suri
Member (Technical)

Rajasekhar V.K.
Member (Judicial)
14.09.2021

SR (LRA)